IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 6, 2008 Session

ESTATE OF HILLARD CARTWRIGHT, ET AL. v. STANDARD FIRE INSURANCE COMPANY

Appeal from the Circuit Court for Davidson County
No. 05C1757 Barbara Haynes, Judge

No. M2007-02691-COA-R3-CV - Filed September 23, 2008

Wilma C. James and the Estate of Hillard C. Cartwright, challenge the trial court's determination that Ms. James did not have standing to enforce an insurance contract between Mr. Cartwright and Standard Fire Insurance Company because she was neither a party to nor an intended beneficiary of the policy, and that the Hillard Cartwright estate could not enforce the policy because the estate did not have an insurable interest in the property at the time of loss. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J, joined. PATRICIA J. COTTRELL, P.J., M.S., not participating.

David E. Danner, Esq., Antioch, Tennessee, for the appellants, the Estate of Hillard C. Cartwright, Wilma C. James.

Jade Rogers Maberry, Gallatin, Tennessee, for the appellee, Standard Fire Insurance Company.

OPINION

On June 13, 2005, Wilma James, for herself and as Administratrix of the Estate of Hillard C. Cartwright,[1] filed suit in Davidson County Circuit Court seeking recovery under an insurance policy issued by Aetna Casualty and Surety Company, now Standard Fire Insurance Company ("Standard Fire") for fire damage sustained at the former residence of Mr. Cartwright.[2] On November 29, 2007, the trial court granted summary judgment in favor of Standard Fire finding that the Estate of Hillard C. Cartwright ("the Estate") had no insurable interest in the property at the time

---

[1] Ms. James was named Administratrix of Mr. Cartwright's estate on April 4, 2005 by Probate Division, Seventh Circuit Court, Nashville, Tennessee in Davidson County.

[2] At some point prior to this litigation, Aetna Casualty and Surety Company became Standard Fire Insurance Company.

of the fire loss and that Wilma James was not a party to or beneficiary of the insurance contract, and, consequently, could not recover thereon.

In ruling on the motion for summary judgment, the Trial Court made the following findings of fact which are not disputed in this appeal.

> 1. On April 27, 1985, Hillard C. Cartwright purchased a homeowner's insurance policy from The Aetna Casualty and Surety Company of Hartford, Connecticut, now The Standard Fire Insurance Company (and hereinafter referred to as The Standard Fire Insurance Company), Homeowner's Policy, No. 0177711-015822900-633 covering property located at 1734 21st Avenue North, Nashville, Tennessee, Davidson County, Tennessee. The policy between Hillard C. Cartwright and The Standard Fire Insurance Company was renewed each year up through the date of loss in question, May 27, 2004.
>
> 2. The structure at the real property located at 1734 21st Ave North, Davidson County, Tennessee suffered a fire loss on May 27, 2004.
>
> 3. Hillard C. Cartwright remained the sole named insured throughout the policy renewal periods, up until and through the date on which the structure on the real property suffered a fire loss, May 27, 2004.
>
> 4. Hillard C. Cartwright and wife, Cenobia C. Cartwright, conveyed their entire interests in the real property located at 1734 21st Avenue North, Davidson County, Tennessee to Vivian C. Cartwright by way of Quitclaim Deed dated March 23, 1995. Said deed is recorded in Book 9629, page 390, Registers Office, Davidson County, Tennessee.
>
> 5. Vivian Cartwright later conveyed her entire interest in the real property located at 1734 21st Avenue N., Davidson County, Tennessee, to Wilma C. James by way of Quitclaim Deed dated January 15, 2003. Said Deed is recorded in instrument number 20030115-0006358, Registers Office, Davidson County, Tennessee.
>
> 6. The Standard Fire Insurance Company was never notified of the change in ownership of the real property located at 1734 21st Ave North, Nashville, Davidson County, Tennessee from Hillard C. Cartwright and wife, Cenobia C. Cartwright, to Vivian C. Cartwright.
>
> 7. The Standard Fire Insurance Company was never notified of the change in ownership of the real property located at 1734 21st Ave North, Nashville, Davidson County, Tennessee from Vivian C. Cartwright to Wilma C. James.
>
> 8. Hillard C. Cartwright died December 3, 1998.

9. The Standard Fire Insurance Company was never notified of the death of Hillard C. Cartwright.

10. Plaintiff Wilma C. James is not now nor has ever been a party to the contract of insurance between Hillard C. Cartwright and The Standard Fire Insurance Company.

On appeal, Ms. James argues that she may recover under the policy because she is both the current owner of the property and a member of the Cartwright family. Alternatively, she argues that she may recover under the policy as the legal representative of the Estate because the policy provides for such coverage and because Mr. Cartwright intended for the policy to be maintained to cover the property he gave to his heirs.

ANALYSIS

This Court's review of the trial court's award of summary judgment is *de novo* with no presumption of correctness, the trial court's decision being purely a question of law. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). Summary judgment is appropriate where there is no genuine issue of material fact relevant to the claim or defense and where the movant is entitled to judgment as a matter of law on the undisputed facts. *See* Tenn. R. Civ. P. 56.03. While the parties agree that there was no genuine issue of material fact, Ms. James and the Estate of Hillard C. Cartwright dispute the trial court's determinations of law.

I. The Right of Wilma C. James, Individually, to Enforce Hillard Cartwright's Insurance Policy

Ms. James asserts that she has a right to enforce the insurance policy as a relative of Mr. Cartwright and as the current owner of the property, which has remained within the Cartwright family.[3] She contends that the property was conveyed to Mr. Cartwright's family members in accordance with his wish that his family have the benefit of the property and, consequently, that she should have the benefit of the protection afforded by the policy.

Insurance contracts are subject to the same rules of construction and enforcement as apply to contracts generally. *McKimm v. Bell*, 790 S.W.2d 526, 527 (Tenn.1990); *Merrimack v. Batts*, 59 S.W.3d 142, 148 (Tenn. Ct. App. 2001). As such, courts must give affect to the parties' intentions as reflected in the written contract, taken as a whole and giving the policy's terms their natural and ordinary meaning. *Merrimack*, 59 S.W.3d at 148; *English v. Virginia Sur. Co.*, 268 S.W.2d 338, 340 (Tenn. 1954); *Tata v. Nichols*, 848 S.W.2d 649, 650 (Tenn. 1993). In the absence of fraud, overreaching, or unconscionability courts must give effect to a provision in an insurance policy when its terms are clear and its intent certain. *Merrimack*, 59 S.W.3d at 148 citing *Quintana v. Tenn.*

[3] According to the representations of counsel, Vivian Cartwright was the daughter of Hillard and Cenobia Cartwright and Wilma James is the niece of Vivian Cartwright.

Farmers Mut. Ins. Co., 774 S.W.2d 630, 632 (Tenn. Ct. App. 1989). The contract of insurance is also purely a personal contract between the insured and the insurance company, and does not attach to or run with the title to the insured's property absent an agreement for the transfer of the policy. *John Weis, Inc. v. Reed*, 118 S.W.2d 677, 682 (Tenn. Ct. App. 1938)*; Johnson Transfer & Freight Lines v. American Nat. Fire Ins. Co.,* 79 S.W.2d 587, 589 (Tenn. 1935); *American Steam Laundry Co. v. Hamburg Bremen Fire Ins. Co.*, 113 S.W. 394, 395 (Tenn. 1908).

It is undisputed that the insurance policy at issue was entered into between Mr. Cartwright and Aetna Casualty and Surety Company (now Standard Fire) to insure property owned by Mr. Cartwright, and that Ms. James was not a party to the contract. A review of the record also shows that Ms. James was not covered as an "insured" under the terms of the contract. The policy defined the parties to be covered by the contract as the named insured, Mr. Cartwright, and "*the following residents of your household*: (a) your relatives; (b) any other person under the age of 21 who is in the care of any person named above." Homeowners Policy, Definitions Section 4, p.1 (emphasis added). There is no evidence in the record that Ms. James, a resident of Chicago, Illinois, was at any time a resident of Mr. Cartwright's household. Therefore, Ms. James was neither a party to nor an "insured" person under the terms of the policy.

Since Ms. James was not covered directly under the terms of the contract, she may only enforce the policy if she was an intended third party beneficiary of the insurance contract. Generally, contracts are presumed to be executed for the benefit of the parties thereto and not third persons, but an intended third party beneficiary may enforce a contract so long as the benefit flowing to the third party was intended, and not merely incidental. *See Owner-Operator Indep. Driver's Association, Inc. v. Concord E.F.S., Inc.*, 59 S.W.3d 63, 68 (Tenn. 2001); *Willard v. Claborn*, 419 S.W.2d 168, 169 (Tenn. 1967); *Moore Constr. Co. v. Clarksville Dept. Of Elec.*, 707 S.W.2d 1, 9 (Tenn. Ct. App. 1985); *see also* Richard A. Lord, *Williston on Contracts* § 37:1 (4th ed. 2000). A person is an intended third-party beneficiary if (1) the parties to the contract have not otherwise agreed; (2) there was a clear intent to have the contract operate for the benefit of the third party; and (3) the terms of the contract or the circumstances surrounding performance indicate that either: (a) the performance of the promise will satisfy a duty owed to the third party; or (b) the promisee intends to give the beneficiary the benefit of the promised performance. *Owner-Operator Independent Driver's Association, Inc. v. Concord E.F.S., Inc.*, 59 S.W.3d 63, 70 (Tenn. 2001). The focus of the analysis is whether the promisee clearly intended to confer the principal benefit of the contract upon the third party. *Id.* at 71.

Applying the holding of *Owner-Operator* to the present case, we look to Mr. Cartwright's intent, as reflected in the terms of the contract. There is no language in the policy suggesting that Mr. Cartwright intended Ms. James to be covered by or benefit from the policy and there is no proof in the record showing any duty to Ms. James owed by Mr. Cartwright that the insurance contract could have discharged. Absent such, Ms. James has no standing to enforce the policy in her own right.

Ms. James relies on *Merriam v. Nat'l Life & Accident Ins. Co.,* 86 S.W.2d 566 (Tenn. 1935), and *Manhattan Savings Bank & Trust Co. v. Bedford,* 30 S.W.2d 227 (Tenn. 1930), to support her contention that, as a family member of the insured who came into ownership of the property, she is entitled to the benefits of the insurance contract. She argues that the holding of *Merriman* that "family interdependence, even if not by blood, constitutes an insurable interest," 86 S.W.2d at 568, when taken in conjunction with the statement in *Manhattan Savings Bank* that, in construing a deed, "the court should follow the intention of the parties, arrived at from the language of the instrument read in light of the surrounding circumstances," 30 S.W.2d at 229, means that, because the property was gifted to members of Mr. Cartwright's family, subsequent familial owners have a right to enforce Mr. Cartwright's insurance policy covering the property. While Ms. James correctly quotes the court in *Merriam* and *Manhattan Savings Bank*, the cases are not applicable to this case.

Merriam involved the efforts of the named beneficiary of a life insurance policy to recover on the policy; payment had been denied based upon the assertion that a person without a family relationship could not be a beneficiary under a life insurance policy. The court held that the holder of a life insurance policy may name any person, regardless of their relationship to the insured, as a beneficiary under the policy. The only relevance to this case of *Manhattan Savings Bank*, a case involving the interpretation of the term "released and quitclaimed" in an agreement relating to the partition of property, which property was also the subject of a testamentary disposition, is the court's holding that a quitclaim deed "carries the same title as any other deed." 30 S.W.2d at 229.

The conveyance from Mr. Cartwright to Vivian Cartwright was for the nominal sum of $1.00, which may be interpreted as gifting the property to her; however, the legal effect of the quitclaim deed was to convey his entire interest in the property to her. The fact that the property may have been gifted to Ms. Cartwright does not change the rule, discussed above, that an insurance contract "does not attach to or run with the title to the insured's property." *American Steam Laundry Co.*, 113 S.W. at 395.

Ms. James argues alternatively, relying on *Phoenix Ins. Co. v. Brown*, 381 S.W.2d 573 (Tenn. Ct. App. 1964), that she acted as an agent for Mr. Cartwright maintaining the property and the insurance coverage during his incapacity and following his death. There is no proof of Ms. James' alleged agency in this record. Assuming, *arguendo,* that there was such, the mere fact of her agency does not give her a right, independent of Mr. Cartwright's, as her principal, to enforce the contract. *See William and T.F. Foster v. J.H. and E. Smith*, 42 Tenn. 474, (2 Cold.) (Tenn. 1865) (finding that the agent and the principal "step into the shoes of" the other); *First Nat. Bank of New Bremen v. Burns*, 103 N.E. 93, 94 (Ohio 1913) (holding that the agent has the same legal identity as the principal - the principal's other self - so long as the agent is acting within the scope of the agency); 3 *Am. Jur. 2d Agency* § 1 (2008) (stating "the agent is the representative of the principal and acts for, in the place of, and instead of, the principal"). The question in *Phoenix,* was whether a divorced husband who had conveyed property to his former wife and who, in taking care of the property after the conveyance, had procured a property insurance policy in his own name, rather than in the name of his ex-wife, had an insurable interest therein. The court held that, in light of the previous marital

relation and the possibility that the ex-husband could be held financially liable for the loss, he could procure the policy in his own name. *Phoenix Ins. Co.*, 381 S.W.2d at 249.

Ms. James was not a party to the insurance contract and neither the language of the contract nor evidence of record supports the finding that she was an intended beneficiary of the coverage offered under the policy. Moreover, there is no proof that she acted as agent of Mr. Cartwright with respect to any interest he might have had in the property. The trial court correctly held that she did not have standing to enforce the insurance policy in her own right.

II. The Right of the Estate of Hillard C. Cartwright to Enforce the Insurance Contract

Ms. James, as the legal representative of Mr. Cartwright's estate, argues that the Estate is entitled to enforce Mr. Cartwright's policy under its terms. The policy provides "[i]f any person named in the Declarations or the spouse, if a resident of the same household dies; (a) we insure the legal representative of the deceased *but only with respect to the premises and property of the deceased covered under the policy at the time of death*." Homeowners Policy, Section 8(a), p. 20 (emphasis added). This provision gives the legal representative of the deceased insured the right to enforce the policy, but limits coverage to "the premises and property of the deceased covered under the policy at the time of death." *Id.* The contract defines "premises and property" to include the residence on the property, as well as any other structures or grounds used by the insured as a residence. In order for this provision of the contract to be operable, we must determine what, if any, "premises and property" were covered by the policy at the time of Mr. Cartwright's death. Since Mr. Cartwright no longer held legal title to the property at the time of his death, the relevant inquiry is whether Mr. Cartwright maintained any other insurable interest in the property such that the insurance contract was valid at his death.

It is essential to the validity of an insurance contract that the insured have an "insurable interest" in the property insured; otherwise, the contract "amounts to no more than a wager and is void because of violation of public policy." *Duncan v. State Farm Fire & Cas. Co.*, 587 S.W.2d 375, 376 (Tenn. 1979). However, it is not necessary that the insured have the "absolute and unqualified" ownership of the property in order to have an insurable interest. *Baird v. Fidelity-Phoenix Fire Ins. Co.*, 162 S.W.2d 384, 390 (Tenn. 1942). One may have an insurable interest in property "if by its continued existence he will gain an advantage, or if by its damage or destruction he will suffer a loss, whether or not he has any title in, lien upon or possession of the property. *Id.* at 390-391; *Cherokee Foundries v. Imperial Assur. Co.*, 219 S.W.2d 203 (1949). "Generally any person who derives benefit from existence of property or who would suffer loss from its destruction has an insurable interest therein and *it is sufficient that loss of the property insured not only would, but might, subject the insured to pecuniary injury*." *Isabell v. Aetna Ins. Co., Inc.*, 495 S.W.2d 821, 825 (Tenn. Ct. App. 1971) (emphasis added); *American Indemnity Co. v. Southern Missionary Coll.*, 260 S.W.2d 269, 273 (Tenn. 1953). Persons or entities who have been held to have an insurable interest even without clear ownership or title include persons in possession of property, *Baird*, 162 S.W.2d at 390, a fiduciary or trustee of property, *Id.*, someone with a contingent interest in property,

Id. at 391, a husband's beneficial interest in his wife's property, *Gleason v. Prudential Fire Ins. Co.*, 151 S.W. 1030, 1035 (Tenn. 1912), and a corporate shareholder's interest in the assets of the corporation, *American Indem. Co.*, 260 S.W.2d at 273.

Hillard Cartwright conveyed his entire interest in the property approximately three years prior to his death. Ms. James and the Estate have failed to identify what advantage or possible loss Mr. Cartwright would have suffered had the property been destroyed after its conveyance, but before his death. Absent this, we do not presume the existence of an insurable interest in the property after alienation; rather we presume that all rights, title and interest of Hillard Cartwright were conveyed. The insurance contract, consequently, was void for lack of an insurable interest at the time of Mr. Cartwright's death.[4] There is no evidence in the record to show that Hillard Cartwright, at the time of his death, benefitted from the continued existence of the property or that he would have suffered any loss from its destruction; therefore, Mr. Cartwright's estate had no insurable interest in the property at the time of the fire loss. We affirm the trial court's finding that the insurance policy may not be enforced by the Estate.

CONCLUSION

For the reasons set forth above, we affirm the judgment of the trial court in all respects. Costs are assessed to Wilma C. James and the Estate of Hillard C. Cartwright, for which execution may issue, if necessary.

_____

RICHARD H. DINKINS, JUDGE

[4] Because the insurance contract was void when Mr. Cartwright no longer held any insurable interest in the property, Standard Fire should return the premiums paid back to March 23, 1995, when the property was conveyed in order to avoid unjust enrichment. The answer to the complaint asserts that a portion of the 2004 premium in the amount of $483.00, had been refunded issued by check payable to Hillard Cartwright on June 14, 2004; this is apparently the 2004 unearned premium.